

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* NORED, Minor.

UNPUBLISHED  
January 28, 2020

No. 349397  
Oakland Circuit Court  
Family Division  
LC No. 2017-853565-NA

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Before: METER, P.J., and FORT HOOD and REDFORD, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court’s termination of his parental rights to his daughter, BN, under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

I. BACKGROUND

Respondent-father is the biological father of four children, only one of which was in his care at the time relevant to this case. This appeal concerns only respondent-father’s youngest child, BN, whose mother was respondent-father’s live-in girlfriend at the time of BN’s removal.<sup>1</sup> Ultimately the trial court terminated respondent-mother’s parental rights to BN; respondent-mother, however, is not an appellant in these proceedings.

Petitioner’s involvement in this case dates to December 2016, at which time BN was one year old. On the day after Christmas, police officers were called to the family home after respondent-mother stabbed respondent-father in the wrist with a kitchen knife. It was later revealed that respondent-mother acted out of retaliation after respondent-father pushed her, either into a wall or onto a bed. BN was in the same room as her parents during the altercation and, when police arrived, they found the kitchen knife on a window sill next to BN’s bed and within her reach. For her actions, respondent-mother pleaded guilty to assault with intent to do great bodily harm and a no-contact order was entered precluding contact between the parents. A

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<sup>1</sup> Respondent-mother’s 12-year-old son was also a resident of the home.

safety plan was also implemented for the family, under which BN was placed in the care of a maternal aunt.

Petitioner subsequently discovered that the parents were living together in violation of the no-contact order and moved the trial court to assume temporary jurisdiction over BN. The petition alleged that domestic violence was an ongoing issue with the parents and that respondent-father had choked respondent-mother in the preceding months in front of respondent-mother's other child. In May 2017, the parents entered no-contest pleas<sup>2</sup> in the instant case and the trial court assumed jurisdiction over BN, continuing her placement with the maternal aunt. Respondent-father was ordered to comply with a treatment plan which required him to participate in parenting time, submit to random drug screening, undergo a psychological evaluation, maintain suitable housing and stable income, complete parenting and domestic-violence classes, participate in individual therapy, and attend parenting time with BN. Shortly thereafter, respondent-father completed a psychological evaluation, which revealed that respondent-father had a substance-abuse issue with marijuana and would benefit from a substance-abuse program and discontinuation of his cohabitation with respondent-mother.

Over the next 16 months, respondent's participation in and benefit from the treatment plan was inconsistent at best. Respondent-father was combative with caseworkers and resisted many of the plan's requirements. Indeed, respondent-father refused to sign several updated service plans, indicating that he did not agree with them. Respondent-father would also refuse to answer caseworkers' questions and provide requested documentation. He was verbally combative with caseworkers and had to be rereferred to services multiple times. Respondent-father refused, at times, to participate in drug screens and, when he did participate, he often tested positive for marijuana. By the end of the case, respondent-father had missed 90 drug screens, all of which were construed as positive. Respondent-father did complete a substance-abuse program in January 2018, but this program did not alter the no-shows.

Respondent-father participated in a parenting class and psychiatric evaluation, but only after several referrals. Respondent-father reported oscillating in and out of homelessness and was inconsistent in providing housing documentation to caseworkers. Respondent-father did not maintain consistent employment. Although he had a job at one point in the proceedings, he quit that job in June 2018 and never provided proof of any new employment. Respondent-father did not consistently attend individual therapy and never completed domestic-violence services. At one point, respondent-father requested financial assistance with domestic-violence classes, but petitioner informed him that assistance was not available because respondent-father was an aggressor of the violence.

Domestic violence remained a concern throughout the case. Despite the no-contact order, and despite respondent-father's assurances that his relationship with respondent-mother had ended, the parents were often seen together; indeed, the parents left a court hearing together, in the presence of caseworkers and attorneys. Both parents self-reported continued domestic

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<sup>2</sup> Respondent-father specifically admitted to the domestic violence incidents.

violence after BN's removal and, as late as January 2018, the trial court was informed of continued domestic violence with both parents acting as aggressors.

Respondent-father consistently visited with BN for much of the first year after her removal. The visits were mostly appropriate, but caseworkers had to frequently remind respondent-father to supervise the child more closely. However, as the case progressed, respondent-father's participation waned; indeed, respondent-father cancelled his visitation with the child for the months of June and July 2018. By November 2018, respondent-father had become a frequent no-show at parenting time, causing the trial court to suspend respondent-father's parenting time. BN remained with the maternal aunt throughout the proceedings and the aunt stated that she was willing to adopt BN. All reports indicate that the child was doing well in the aunt's care and all her needs were being met. BN referred to the aunt as her "mom" and, although caseworkers reported a bond between respondent-father and BN, BN viewed respondent-father as more of a playmate than a parent. Still, respondent-father's no-shows for parenting time caused the child distress.

Because of respondent-father's noncompliance with the treatment plan, in September 2018, petitioner moved the trial court to terminate respondent-father's parental rights to BN. Hearings on the petition were held between January and May 2019. Ultimately, the trial court concluded that statutory grounds existed to terminate respondent-father's parental rights to BN under MCL 712A.19b(c)(i), (g), and (j). The trial court noted that domestic violence and substance abuse remained issues in this case, despite the provision of services, and concluded that respondent-father's noncompliance with the treatment plan meant that there was no reasonable likelihood that respondent-father would be able to remedy these conditions within any reasonable time. The trial court opined that BN, who had been in care for the majority of her life, needed permanency and stability, which respondent-father could not provide. Accordingly, the trial court concluded that termination of respondent-father's parental rights was in BN's best interests. This appeal followed.

## II. ANALYSIS

Respondent-father challenges the trial court's statutory-grounds and best-interest findings. "In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). Once a ground for termination is established, the trial court must order termination of parental rights if it finds that termination is in the child's best interests. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "The trial court should weigh all the evidence available to determine the children's best interests." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). "To determine whether termination of parental rights is in a child's best interests, the court should consider a wide variety of factors that may include 'the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home.'" *Id.*, quoting *In re Olive/Metts*, 297 Mich App at 41-42. Other relevant factors include any relevant "history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *Id.* at 714.

“We review for clear error both the court’s decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court’s decision regarding the child’s best interest.” *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

The trial court terminated respondent-father’s parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), which permit termination of parental rights under the following circumstances:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

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(g) The parent, although, in the court’s discretion, financially able to do so, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.

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(j) There is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.

The trial court assumed jurisdiction over BN primarily because of domestic-violence issues between the parents. Despite being ordered to complete domestic-violence courses, respondent-father never did so. Respondent-father blames this failure on an inability to pay for the courses in light of petitioner’s policy precluding it from paying for an aggressor’s treatment. Yet, as the trial court pointed out, respondent-father did have a job during a portion of the proceedings and was able to come up with money to purchase marijuana daily. On this record, therefore, it appears that respondent-father’s failure to complete the domestic-violence treatment was a matter of priority, rather than financial ability. More importantly, domestic violence remained an issue between the parents through at least January 2018 and respondent-father’s contact with caseworkers indicates that respondent-father has yet to resolve his aggression issues. Respondent-father’s failure to address his domestic-violence issues indicates that respondent-father has failed to rectify the conditions leading to adjudication, that respondent-father lacks the capacity to provide BN with proper care and custody, and that BN would be at a risk of harm in respondent’s care. Respondent-father’s refusal to address the issue after more

than a year of services, and despite a treatment plan requiring him to do so, indicates that respondent-father is unlikely to resolve the issue in the future. Thus, for this reason alone, we may conclude that the trial court did not err by finding that statutory grounds existed under each of the cited subsections to terminate respondent-father's parental rights.

Moreover, domestic-violence treatment was not the only aspect of the treatment plan that respondent-father failed to adhere to. Respondent-father failed to consistently participate in drug screening—missing 90 screens and testing positive at many others, despite completing substance-abuse treatment. Respondent-father also failed to maintain suitable housing and a legal source of income—once quitting his job and regularly failing to provide documentation of his housing to petitioner. Perhaps most unfortunately, respondent-father even failed to consistently attend parenting time with BN in the latter portions of this case and, despite completing parenting classes, respondent-father often had to be reminded to supervise the child during the visits he did attend. “A parent’s failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child proper care and custody.” *In re White*, 303 Mich App at 710. Similarly, a parent’s failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent’s home. *Id.* at 711. Therefore, respondent’s failure to comply with his treatment plan further supports the trial court’s finding that statutory grounds existed to terminate his parental rights to BN under MCL 712A.19(b)(3)(g)<sup>3</sup> and (j). Accordingly, respondent-father’s challenge to the trial court’s statutory-grounds findings is without merit.

The above analysis also supports the trial court’s conclusion that termination of respondent-father’s parental rights was in BN’s best interests. Simply put, BN’s best interests could not be served by returning her to the care of a parent prone to domestic-violence and aggression—particularly when the parent has refused to address these issues. BN, who was three years old at the time of the removal, had been in care for the majority of her life and we agree with the trial court that she deserved permanency and stability. Unfortunately, respondent-father’s refusal to comply with his treatment plan indicated that respondent-father would not be in a position to provide BN with a safe, appropriate home within any reasonable time.

Respondent-father argues that the trial court’s best-interest findings were inadequate because the trial court failed to explicitly address the fact that BN was placed with a maternal relative. Respondent-father is correct that a child’s placement with a relative is a factor that weighs against termination. See *In re Mays*, 490 Mich 997; 807 NW2d 304 (2012); *In re Olive/Metts Minors*, 297 Mich App at 43. “A trial court’s failure to explicitly address whether termination is appropriate in light of the children’s placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal.” *In re Olive/Metts*, 297 Mich App at 43.

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<sup>3</sup> To the extent that respondent-father argues that he was financially unable to provide for BN, we note that respondent-father was gainfully employed during portions of this case, but *voluntarily* quit his job. On balance, it appears that respondent-father has the ability to be gainfully employed in a stable position, but chooses to expend his effort elsewhere.

Contrary to respondent-father's appellate assertions, however, the record makes clear that the trial court did explicitly consider BN's relative placement. In its oral ruling, the trial court noted that placement with a relative is an explicit factor that it must consider and that generally relative placement weighs against termination. The trial court noted in a written report regarding BN's best interests that BN was thriving "in the relative care provider's home" and that this caregiver was willing to adopt BN. The trial court opined that BN deserved finality and stability and concluded that respondent-father was unlikely to be in a position to provide for BN within any reasonable time.

Again, the record supports these assertions. For more than two years, respondent-father has consistently failed to address his aggression, substance-abuse, income, and housing issues. Respondent-father has been combative with petitioner throughout the case. Additionally, respondent-father's nonattendance at parenting time caused the trial court to revoke his visits with BN in November 2018, meaning that BN did not have contact with respondent-father for approximately six months before the termination. In contrast, BN was doing well in the maternal aunt's care and referred to the aunt as "mom." The aunt consistently worked with petitioner to ensure that BN's needs were met and was willing to adopt BN. On this record, we agree with the trial court that the aunt's likely adoption would provide BN with the stability and finality that she deserved. Accordingly, we find no error in the trial court's conclusion that termination of respondent-father's parental rights was in BN's best interests.

Affirmed.

/s/ Patrick M. Meter  
/s/ Karen M. Fort Hood  
/s/ James Robert Redford